

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL CASE NO. 3:06cv499

ELAINE L. CHAO,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

vs.

VINSON VAN GO, LLC, GREGORY
VINSON and VINSON VAN GO, LLC
401(k) PLAN,

Defendants.

DEFAULT JUDGMENT

THIS MATTER is before the Court on the Plaintiff's motion for default judgment.

This action was brought by Plaintiff, Secretary of Labor, United States Department of Labor ("Secretary"), against Defendants Vinson Van Go, LLC ("Van Go" or "the Company") and Gregory Vinson ("Vinson")¹ pursuant to Sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132 (a)(5), of the Employee Retirement Income Security Act of 1974, as

¹The complaint also names as a Defendant the Vinson Van Go 401(k) Plan (Plan) pursuant to Federal Rule of Civil Procedure 19(a) although no relief is sought against the Plan.

amended, 29 U.S.C. § 1001 *et seq.*, (ERISA). The Plaintiff seeks to enjoin acts of the Defendants which violate ERISA and to obtain appropriate relief for breaches of fiduciary duty under ERISA. The Defendants were served with the summons and complaint on May 17, 2007 but failed to answer or otherwise appear. The Clerk of Court entered default against the Defendants on July 5, 2007. The Court finds, for the reasons stated in the motion, that default judgment is appropriate.

DEFAULT JUDGMENT

IT IS, THEREFORE, ORDERED that the Plaintiff's motion for default judgment is hereby **GRANTED** and **Judgment** is entered as follows:

1. Defendants are enjoined from violating the provisions of Title I of ERISA.
2. Defendants are permanently enjoined from acting as fiduciaries, trustees, agents, or representatives in any capacity to any employee benefit plan, as defined by ERISA.
3. Defendants shall make restitution to the Vinson Van Go, LLC 401(k) Plan in the amount of \$7,632.72, with post judgment interest to be assessed against any remaining unpaid balance of such amount, in accordance with 28 U.S.C. § 1961, from the date of this Judgment

until paid in full. Defendant Gregory Vinson's participant interest in the Plan, if any, shall be applied as an offset against the amount that is due to the Plan under this Judgment.

4. Defendants are removed from any position the Defendants hold as named or functional fiduciaries to the Plan.
5. M. Larry Lefoldt has filed an affidavit in which he agrees to accept appointment as an Independent Fiduciary and submits to the jurisdiction of this Court for such purposes as are set out herein. M. Larry Lefoldt is appointed as the Independent Fiduciary to the Plan and is charged with the following duties:
 - a. The Independent Fiduciary shall collect, marshal, and administer all of the Plan's assets; evaluate all claims outstanding against them; pay the assets out to participants and other creditors of the plan; and, take such further actions with respect to the plan as may be appropriate under applicable law.
 - b. The Independent Fiduciary shall have all the rights, duties, and responsibilities of any fiduciary or trustee described under the Plan documents or applicable law, including the authority to retain professionals, consultants and other service providers to

assist the Independent Fiduciary in the performance of the duties and responsibilities outlined herein.

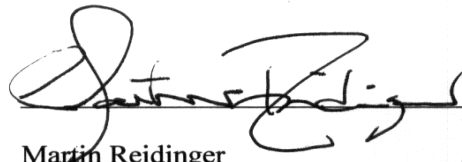
- c. The Independent Fiduciary is authorized to delegate or assign fiduciary duties as appropriate and allowed under the law.
- d. The Independent Fiduciary is authorized to receive, upon approval by the Court, reasonable fees and expenses, payable from the assets of the Plan, for services performed for the Plan and its participants by the Independent Fiduciary and any professional, consultant or other service provider retained by the Independent Fiduciary. Prior to obtaining payment for reasonable services and expenses, the Independent Fiduciary shall present an itemized fee application to the Court, including hourly rates of pay, and dates and hours of work, accompanied by a description of work performed and an itemized statement of expenses for the Independent Fiduciary and all service providers retained by him. The Independent Fiduciary shall provide a copy of the fee application when it is filed with the Court to the Secretary of Labor at: United States Department of Labor, Employee Benefits Security Administration, Attn: Regional Director, 61 Forsyth Street, SW, Suite 7B54, Atlanta,

GA 30303. The Secretary shall object, if at all, no later than 15 days of receipt of the application. Regardless of objection, the Court will decide whether all, a portion or none of the Independent Fiduciary's requests should be granted.

- e. The Independent Fiduciary may request that the Defendant deliver or otherwise make available to the Independent Fiduciary any information, documents, files or other compilations, wherever and however stored, that are reasonably necessary to perform the duties of the Independent Fiduciary. The Defendant shall comply with such request.
 - f. The Independent Fiduciary is authorized to give instructions respecting the disposition of assets of the Plan.
6. The Defendants shall reimburse the Plan for the reasonable fees and expenses of the Independent Fiduciary and other service providers for services performed for the Plan under this Judgment. The Defendants shall make full payment or object to each such application no later than 15 days after such application, having been filed with the Court, is received by the Defendants. The Secretary shall serve a copy of the application on the Defendants at their last known address and notify the Court of such service. Interest shall

accrue on any past due amount at the statutory rate. Defendants shall be responsible, jointly and severally, for all costs, including reasonable attorneys' fees and expenses, incurred by the Independent Fiduciary and/or the Plan in the course of collecting such past due amounts.

Signed: November 1, 2007


Martin Reidinger
United States District Judge

